Preface

The question of ‘why’ this book was written does not need to be asked as it was commissioned for me. The question of ‘why did I accept’ is a different question, and it remains relevant. It is not enough simply to say that the International Court of Justice (ICJ, or ‘the Court’) deserves close attention and a fresh look at its life and work. This is certainly true to some extent, and it could be said that there will hardly ever be enough spotlight thrown on this remarkably successful enterprise. Today, when the International Criminal Court (ICC) is riddled with problems and interstate arbitration far in excess of the hopes invested in it, the ICJ has a full docket and inspires great confidence in many states – its clients. This has not always been so. At the end of the 1960s and during the 1970s the Court was in a state of crisis. During the 1990s it faced (not unhealthy) competition from a series of tribunals which, at the time, were mushrooming in the field of international relations. The fact that the ICJ is now expanding confidently is a result which cannot simply be explained by coincidence and luck. The perceived ‘seriousness’ of the Court by states (which I was able to witness when I pleaded in The Hague) is certainly part of that success, but things do not stand still, and new evolutions will demonstrate the extent to which the Court is prepared for the challenges of the future.

So why, then, agree to write this book? Was it simply to jump onto the bandwagon of a successful court in order to bask in its success? There are certainly other, more profound, reasons to engage into such a course. With regard to the first of these, after recently having written a lengthy and productive treatise on the ICJ (spanning approximately 1,400 pages),¹ it was tempting to revisit the Court from a completely different vantage point. The earlier book was written for lawyers, detailing aspects of the Court’s existence, organization, work, procedure and jurisprudence. The present book has a completely different construction, providing a concise and readable account of the ICJ. I therefore look at the Court from a bird’s eye view, having trekked extensively through its terrain, now viewing the same landscape from above to try to bring together the main lines of its morphology. The proposed readership of

¹ R. Kolb, *The International Court of Justice* (Oxford: Hart, 2013).

this book, therefore, is also different: the book is written for those who wish to learn more about the ICJ, be they students (of any discipline), journalists, politicians or members of the public. In these circles, knowledge of the Court, regrettably, is minimal. This state of affairs could be partially rectified – and in my view should be rectified – by way of a suitable text. Being addressed primarily to non-lawyers, the text is written in as simple and understandable a way as possible, English not being my mother tongue. Typically, more problems are raised than articulated solutions offered, as it is essential to understand the problems and their causes before looking at the answers. For those readers who are interested in knowing more about the legal answers, reference is made to my other book on the ICJ, referred to above. The present work can be read in a *pas de deux* with the other title.

Finally, why should the non-specialist be interested in the existence and work of the Court? It would be all too simple to pinpoint the fact that the Court is becoming increasingly important in that it deals with a significant range of international disputes. Nor would it be decisive to affirm, however correctly, that some knowledge of the Court is necessary for today's citizen on account, for example, of an increasing importance of the rule of law in national and international affairs (as part and parcel of the frequently mentioned 'good governance'). It could perhaps be added that the level of ignorance about the Court is such that many should be eager to rectify this state of affairs – but here is the essential point.

Education tends to operate primarily on a national basis: one learns about one's own state – its culture, its history, its traditions, its politics – and then moves on to learn about other states – their history, their contacts with one's own state, and their conflicts, together with their resolution, peaceful or belligerent. Education in international affairs, and especially with regard to the institutions of the international community, comes last and is based essentially on the non-compulsory efforts each of us is ready to provide. It is suggested that the proposed readers of this book could and should be interested in filling these gaps in their education; to learn what efforts have been made since the nineteenth century in order to increasingly advance the interests not only of each state *uti singulus* but also of the international society as a whole, promoting the common good through peaceful cooperation.

This effort is more urgent today than it has ever been, since there is a tendency to return blindly to 'national solutions' which, more often than not, are simply ineffective in a world as interconnected as that of today. For example, what could be a national solution in the event of a dispute between two states? One state imposes its views on the other? That

would hardly be a *resolution* of the conflict as the state having been compelled will strenuously resist the demand of the other. However, to say that there must be a mutually agreed solution, or recourse to a court of justice which applies legal rules relevant to the dispute in question, implies some knowledge of how that process is to function. It also presupposes that the actors are able to free themselves, to some degree, of national bias and to consider the objective conditions for the proper working of the 'dispute settlement procedure' at the interstate level.

This is so at least if the hope is that the dispute should be settled successfully, so that the states caught in it can look ahead and resume not only cooperation but also 'national policy'. Consider, for example, maritime delimitation claims. For as long as the maritime boundary remains unsettled no investor would dare to conclude final concession contracts for the exploitation of oil as the legal uncertainty would temper any such action. The resolution of the dispute will remove these obstacles and open the way for resource exploitation. National policy, having been impeded by the dispute, is then likely to revert to unhindered action and reap the advantages of income flowing from concession contracts. Not all situations are as clear cut but all have, to some extent, this scheme of things as their basis.

It is helpful to learn about the processes and the necessary elements of such dispute resolution at the international level, and the price it demands. It is urgent to understand 'international questions' better in order to match them with the 'national questions' in a world where the imbalance between these two prongs remains pronounced. This book attempts to contribute something to that aim.

As the title suggests, the account is short, interesting, lively and practical. The reader can decide to what extent I have succeeded in this goal. The aim of the book also dictates its scope. This is not a detailed book about the ICJ; neither is it primarily a legal treatise on its functioning. It is a book which attempts to provide the reader with an overall view of the Court; it never tries to be exhaustive, and sheds light only on selected aspects of the Court's structure and functions. It attempts to assemble only those aspects which are compatible with a fluid reading of the various chapters, although some chapters do have a higher concentration of legal information. This is the case, for example, in Chapter 9 (covering jurisdiction and admissibility) and Chapter 12 (covering procedure and process). In those areas of study, the legal aspects could not be neglected. Moreover, it was thought that it would be of interest for the reader to explore some aspects in a slightly different and more profound way.

To conclude this Preface, some technical remarks are necessary. First, in order to maintain simplicity of text and flow of argument, I have avoided inserting lengthy footnotes containing references and materials as they would not be at all useful for the proposed readership. Only the absolutely necessary references have been included. Second, Thiago Braz Jardim Oliveira, from Brazil, has provided the text and discussion for the short sections in each chapter which throw increased light on various aspects. Third, at the end of the book I have added a comprehensive bibliography on the ICJ, which has been updated and developed by Thiago. This bibliography explains the series in which the Court publishes its various documents. At this point, it is worth mentioning the most essential publications on the ICJ:

- The Commentary on the Statute is a most useful book with a wealth of key information. As a commentary, it goes through the articles of the Statute of the Court (the treaty instrument which sets out the rules on which the Court rests and which it applies, covering all the important points of its organization and work): A. Zimmermann, C. Tomuschat, K. Oellers-Frahm and C. Tams (eds), *The Statute of the International Court of Justice* (2nd edn, Oxford University Press, 2012).
- At least two commentaries on the Rules of Court (currently of 1978) deserve mention. The most detailed and developed is in the French language: G. Guyomar, *Commentaire du Règlement de la Cour Internationale de Justice, Interprétation et pratique* (Pedone: Paris, 1983); and in the English language: S. Rosenne, *Procedure in the International Court: A Commentary of the 1978 Rules on the International Court of Justice* (Martinus Nijhoff: The Hague, 1983).
- On the Permanent Court of International Justice (PCIJ) – which in a sense is the predecessor of our Court today – the leading publication is by a former American judge of this court: M.O. Hudson, *The Permanent Court of International Justice, 1920–1942, A Treatise* (Macmillan: New York, 1943). The books by A.P. Fachiri, *The Permanent Court of International Justice* (2nd edn, Clarendon Press: London, 1932) and A. Sanchez de Bustamante, *The World Court* (Macmillan, New York, 1925) are also useful, notwithstanding their markedly dated style.
- For the ICJ, the leading publications, apart from the Commentary on the Statute referred to above, are: S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. I–III (3rd edn, Martinus Nijhoff: The Hague/Boston/London, 1997; and with Y. Ronen, 4th edn, Martinus Nijhoff: Leiden, 2006). This book

contains an outstanding amount of detailed information, although there is a slight lack of synthesis and, on occasions, of precise legal argument. By the same author, one should mention *The World Court: What It Is and How It Works* (6th edn, Martinus Nijhoff: Dordrecht/Boston/London, 2003), the aim of which approximates most closely with that of the present book. In the French language, there is only the work by M. Dubisson, *La Cour Internationale de Justice* (Pedone: Paris, 1964), which is of high quality but is out of date.

- As for the case law of the Court, apart from the summaries prepared by the United Nations for the period between 1948 and 1991 (ST/LEG/SER.E/1) and the summaries available on the ICJ website (www.icj-cij.org), two books must be mentioned. The first is now rather dated, but remains a constantly refreshing look at the case law, and is at the highest legal and intellectual level: H. Lauterpacht, *The Development of International Law by the International Court* (Stevens and Sons: London, 1958). In the French language, there is the very carefully written (and best available) treatise summarizing the judgments and advisory opinions of the Court, with bibliographical references for each decision or opinion: P.M. Eisemann and P. Pazartzis, *La jurisprudence de la Cour Internationale de Justice* (Pedone: Paris, 2008). For a collection of the relevant documents relating to the Court, see either the ICJ website (www.icj-cij.org) or S. Rosenne, *Documents on the International Court of Justice* (Martinus Nijhoff: The Hague/Boston/London, 1991) – for obvious reasons this is not completely up to date (the inevitable fate of any hard-copy publication).

And now the time has come to plunge directly into the subject matter.